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BY: _____

1 Matthew T. Ward (Bar No. 180016)
2 mward@archernorris.com
3 Andreas Wokutch (Bar No. 280294)
4 awokutch@archernorris.com
5 Rassa Ahmadi (Bar No. 287576)
6 rahmadi@archernorris.com
7 ARCHER NORRIS
8 4695 MacArthur Court, Suite 350
9 Newport Beach, CA 92660-8816
10 Telephone: 949.975.8200
11 Facsimile: 949.975.8210

12 William A. Johnson – Pro Hac Vice
13 bjohnson@hartzoglaw.com
14 Matthew W. Brockman -Pro Hac Vice
15 mbrockman@hartzoglaw.com
16 HARTZOG CONGER CASON & NEVILLE
17 1600 Bank of Oklahoma Plaza
18 201 Robert S. Kerr
19 Oklahoma City, Oklahoma 73102
20 Telephone: 405.235.7000
21 Facsimile: 405.996.3403

22 Attorneys for Plaintiffs RICHARD M. HUGHES,
23 JAMES K. LUST, JAMES V. STEWART,
24 RICHARD COOK and MARY D. COOK

25 UNITED STATES DISTRICT COURT
26 CENTRAL DISTRICT OF CALIFORNIA, EASTERN DIVISION
27

28 RICHARD M. HUGHES, JAMES K.
LUST, JAMES V. STEWART,
RICHARD COOK, MARY D. COOK,

Plaintiffs,

v.

ED PENDLETON, an individual;
BEVERLY PENDLETON, an
individual; and DOES 1 through 50,

Defendants.

Case No. ED CV 13-01605-JGB-SPx

**FIRST AMENDED COMPLAINT
FOR DAMAGES**

1. Fraud- Intentional
Misrepresentation
2. Fraud- Suppression of Fact
3. Financial Elder Abuse
4. Breach of Fiduciary Duty

DEMAND FOR JURY TRIAL

COMES NOW Plaintiffs, RICHARD M. HUGHES, JAMES K. LUST, JAMES V. STEWART, RICHARD COOK, and MARY D. COOK, who complain and allege as follows:

PARTIES

1. At all times mentioned, RICHARD M. HUGHES was a citizen of the State of California.

2. At all times mentioned, RICHARD COOK was a citizen of the State of California.

3. At all times mentioned, MARY D. COOK was a citizen of the State of California.

4. At all times mentioned, JAMES K. LUST was a citizen of the State of South Dakota, who also at all relevant times resided from time to time in the State of California and was over the age of 65 at all relevant times in this action.

5. At all times mentioned, JAMES V. STEWART was a citizen of the State of Washington.

6. PLAINTIFFS are informed, believe and thereon allege that Defendant, ED PENDLETON is, and at all relevant times herein, was a citizen of the State of Colorado.

7. PLAINTIFFS are informed, believe and thereon allege that Defendant, BEVERLY PENDLETON is, and at all relevant times herein, was a citizen of the State of Colorado.

8. PLAINTIFFS are ignorant of the true names and capacities of Defendants sued herein as DOES 1-50, inclusive, and therefore sue them by the foregoing names which are fictitious. PLAINTIFFS are informed and believe, and thereon allege, that at all times herein mentioned, Defendants DOES 1-50 are, and at all times relevant in this Complaint were individuals and/or business entities of unknown type, are in some manner responsible for PLAINTIFFS' damages as alleged herein. PLAINTIFFS will amend this Complaint to allege their true names

1 and capacities when said information is ascertained.

2 **JURISDICTION AND VENUE**

3 9. This matter is based on diversity jurisdiction pursuant to 28 U.S.C
4 §1332, in that this is a civil action between citizens of different states in which the
5 matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs.
6 PLAINTIFFS Richard M. Hughes, Richard Cook and Mary Cook are citizens of the
7 State of California. PLAINTIFF James K. Lust is a citizen of the State of South
8 Dakota. PLAINTIFF James V. Stewart is a citizen of the State of Washington.
9 PLAINTIFFS are informed and believe and on that basis allege that Defendants Ed
10 Pendleton and Beverly Pendleton are citizens of the State of Colorado.

11 10. Venue is proper in this court pursuant to 28 U.S.C. §1391 because the
12 acts and omissions of defendants complained of herein occurred within the
13 boundaries of this district.

14 **NATURE OF THE ACTION**

15 11. PLAINTIFFS are informed and believe and on that basis allege that at
16 all relevant time herein, defendants Ed Pendleton and Beverly Pendleton owned
17 real property located in Indian Wells, Riverside County California; that said
18 property was located in the Indian Wells Country Club and that these defendants
19 were members of the Indian Wells Country Club.

20 12. PLAINTIFFS are informed and believe and on that basis allege that at
21 all relevant time herein, beginning in or about 2003 and continuing, defendants Ed
22 Pendleton and as to Plaintiffs Hughes and Cooks, Beverly Pendleton, used their
23 golf and social membership at the Indian Wells Country Club to establish and
24 facilitate social relationships with each of the PLAINTIFFS, wherein they gained
25 the trust and confidence of each of the PLAINTIFFS.

26 13. PLAINTIFFS are informed and believe and on that basis allege that Ed
27 Pendleton and as to Plaintiffs Hughes and Cooks, Beverly Pendleton, used their
28 acquired social relationship and trusted friendship with each of the PLAINTIFFS to

1 solicit money from each of them under the guise of an investment in an oil and gas
2 exploration project. All of the solicitations by Defendants, and each of them, took
3 place in Riverside County, State of California.

4 14. PLAINTIFFS are informed and believe and on that basis allege that Ed
5 Pendleton stated to each PLAINTIFF at different times that he did not want any of
6 his investors to know one another, because if it they became known to each other it
7 would be discussed and other people would want to be involved with the
8 “opportunity”.

9 15. PLAINTIFFS are informed and believe and on that basis allege that Ed
10 Pendleton told each PLAINTIFF at different times that he had considerable
11 experience in oil and gas exploration and development, including the drilling,
12 completion and operation of oil and gas wells, and that he was a second generation
13 “oil man” and was known to his friends as “Fast Eddie” or “Big Oil”.

14 16. PLAINTIFFS are informed and believe and on that basis allege that
15 Defendant Ed Pendleton told each PLAINTIFF at different times, and Defendant
16 Beverly Pendleton told Plaintiffs Hughes and Cooks, that Ed Pendleton and his two
17 sons, Louis (“Lou”) Pendleton and Edmund Alan (“Al”) Pendleton, were involved
18 in a successful oil and gas exploration and development operation in Oklahoma,
19 and that he and/or his sons Lou and Al Pendleton had a long standing relationship
20 with the project operator.

21 17. PLAINTIFFS are informed and believe and on that basis allege that
22 Defendants stated to each PLAINTIFF at different times, and Defendant Beverly
23 Pendleton told Plaintiffs Hughes and Cooks, that Lou and Al Pendleton also had
24 significant experience in the oil and gas well drilling industry, including significant
25 experience drilling, completing and operating oil and gas wells in central
26 Oklahoma.

27 18. PLAINTIFFS are informed and believe and on that basis allege that Ed
28 Pendleton stated to each PLAINTIFF at different times that he and his sons, Lou

1 and Al Pendleton, were in possession of 3D seismic surveys of a certain tract of
2 land located in Oklahoma, which Ed Pendleton referred to at different times as a
3 “honey of a prospect” and/or “the big one”.

4 19. PLAINTIFFS are informed and believe and on that basis allege that Ed
5 Pendleton stated to each PLAINTIFF at different times that they would make a lot
6 of money if they invested in “his” operation.

7 20. PLAINTIFFS are informed and believe and on that basis allege that
8 Defendants, and each of them, stated to each PLAINTIFF at different times, and
9 Defendant Beverly Pendleton told Plaintiffs Hughes and Cooks, that he and his
10 sons, Lou and Al Pendleton, had their own money invested in the oil exploration
11 project for which they were soliciting money from PLAINTIFFS.

12 21. PLAINTIFFS are informed and believe and on that basis allege that Ed
13 Pendleton stated that he only invited the PLAINTIFFS to invest because the drilling
14 and production was moving so fast that he and his sons, Lou and Al Pendleton,
15 needed additional cash to keep up with the drilling and completion costs associated
16 with their interests.

17 22. PLAINTIFFS are informed and believe and on that basis allege that Ed
18 Pendleton stated to each PLAINTIFF at different times that he needed and wanted
19 investors to put their money in the prospect right alongside his money at the
20 beginning of the project.

21 23. PLAINTIFFS are informed and believe and on that basis allege that
22 Defendants provided each PLAINTIFF at different times, and Defendant Beverly
23 Pendleton told Plaintiffs Hughes and Cooks, with spreadsheets of projected returns
24 on investment and represented that those spreadsheets were predicated on oil and
25 gas wells that the Defendants and Lou and Al Pendleton were involved in.

26 24. Prior to investing monies with Defendants, PLAINTIFFS Richard and
27 Mary Cook were invited by Defendants Ed and Beverly Pendleton to meet with
28 them at the Indian Wells California home of Beverly and Ed Pendleton. That

1 meeting was attended by Plaintiffs Mary and Richard Cook, defendants Beverly
2 and Ed Pendleton, and Al Pendleton. During that meeting defendants Beverly and
3 Ed Pendleton presented colored charts and production data relative to the
4 defendants' solicitation of money from Plaintiffs Richard and Mary Cook for the oil
5 exploration project. Defendants Ed Pendleton and Beverly Pendleton, as well as Al
6 Pendleton, were involved in the presentation and discussion of the charts and
7 production data including the discussions and associated representations relative to
8 the oil exploration project and potential profits from the proposed investment.

9 25. Prior to investing monies with Defendants, PLAINTIFF Richard
10 Hughes was invited by Defendants Ed and Beverly Pendleton to meet with them for
11 lunch. While at lunch, Defendants Ed Pendleton and Beverly Pendleton discussed
12 with Hughes the family oil business. During the meeting defendant Beverly
13 Pendleton advised Hughes that her father was a great businessman and that her
14 husband Ed Pendleton had learned everything about the oil business from her
15 father. Defendant Beverly Pendleton also stated to Plaintiff Hughes that Hughes
16 was "in good hands" relative to the proposed investment in the oil exploration
17 project and that the Pendletons work "real hard". During a subsequent meeting at
18 the Indian Wells, California home of defendants Ed Pendleton and Beverly
19 Pendleton; Ed Pendleton, in the presence of defendant Beverly Pendleton, presented
20 Hughes with colored charts and production data relative to defendants' solicitation
21 of money from Plaintiff Hughes. During that meeting Plaintiff Hughes asked
22 defendant Beverly Pendleton if she knew about the operation and she responded
23 "yes".

24 26. In or about Spring 2008, Plaintiff Stewart was invited by Defendants
25 Ed Pendleton and Beverly Pendleton to attend a dinner meeting in Indian Wells,
26 California. Plaintiff Richard Cook also attended this dinner meeting. While at
27 dinner defendant Ed Pendleton stated that the Pendleton family was experienced in
28

1 the oil and gas exploration business and was three generations of oil and gas
2 exploration family.

3 27. PLAINTIFFS are informed and believe and on that basis allege that Ed
4 Pendleton claimed that he and his sons, Lou and Al Pendleton, had a “significant”
5 history with the operator of the prospect, Bays Exploration, Inc. and its owner Joe
6 Bays.

7 28. PLAINTIFFS are informed and believe and on that basis allege that
8 Defendants stated to each PLAINTIFF at different times, and Defendant Beverly
9 Pendleton told Plaintiffs Hughes and Cooks, that either he or his sons
10 Lou and Al Pendleton would be on-site monitoring operations on an ongoing basis
11 and for protection of PLAINTIFFS.

12 29. Based upon the representations of Defendants, PLAINTIFFS
13 collectively delivered a total of \$5,280,000 to Defendants for capitalization and
14 costs related to the oil exploration project.

15 30. PLAINTIFFS are informed and believe and on that basis allege that
16 Defendants’ representations about the oil exploration business, PLAINTIFFS’
17 investments, and the use of PLAINTIFFS’ monies, as described in this Complaint,
18 were false and/or Defendants concealed material facts from PLAINTIFFS, which
19 caused damages to PLAINTIFFS as herein alleged.

20 **FIRST CAUSE OF ACTION**

21 **(Fraud-Intentional Misrepresentation)**

22 **(By Richard M. Hughes Against All Defendants)**

23 31. PLAINTIFFS incorporate and re-allege, all previous paragraphs as if
24 set forth in full herein.

25 32. PLAINTIFF is informed and believes and on that basis alleges that in
26 or about March, 2005 and continuing, Defendants falsely and fraudulently
27 misrepresented the following facts to PLAINTIFF RICHARD HUGHES:
28

1 a. That Ed Pendleton, Lou Pendleton and Al Pendleton had
2 experience in the oil and gas well industry, including experience in the drilling and
3 completion of oil and gas wells located in central Oklahoma.

4 b. That Ed Pendleton, Lou Pendleton and Al Pendleton owned a
5 transferrable interest in an oil exploration project(s) (the "Project").

6 c. That Ed Pendleton, Lou Pendleton and Al Pendleton had a long
7 standing relationship with the project operator known as "Bays Exploration".

8 d. That Ed Pendleton, Lou Pendleton and Al Pendleton had their
9 own money invested in the Project(s).

10 e. That Ed Pendleton, Lou Pendleton and Al Pendleton owned and
11 had purchased the seismic studies which related to the Project(s), and had the
12 means and resources necessary to interpret these seismic studies and to provide
13 geological and geophysical analysis of these seismic studies on the PLAINTIFFS'
14 behalf.

15 f. That Ed Pendleton, Lou Pendleton and Al Pendleton had the
16 financial resources and administrative capability to competently manage the
17 PLAINTIFFS' investment in the Project.

18 g. That Ed Pendleton, Lou Pendleton and Al Pendleton would be
19 onsite on a regular basis to oversee operations at the Project(s) and for the
20 protection of PLAINTIFF'S investment.

21 h. That PLAINTIFF'S capital investment would be used for
22 operations and costs relating to the Project(s) and not for any other purpose,
23 including the personal use of Ed Pendleton, Lou Pendleton and/or Al Pendleton.

24 i. That the written projected returns on PLAINTIFF'S investment
25 provided by Defendants, were based on Defendants' other oil exploration projects
26 and returns.

27 33. PLAINTIFF is informed and believes and on that basis alleges that
28 these representations were in fact false and Defendant knew them to be false at the

1 time that they were made, and at all times herein mentioned.

2 34. PLAINTIFF is informed and believes and on that basis alleges that the
3 true facts were as follows:

4 a. That Ed Pendleton, Lou Pendleton and Al Pendleton did not
5 have experience in the oil and gas well industry, and did not have experience in the
6 drilling and completion of oil and gas wells located in central Oklahoma.

7 b. That Ed Pendleton, Lou Pendleton and Al Pendleton did not
8 own a transferrable interest in the Project(s).

9 c. That Ed Pendleton, Lou Pendleton and Al Pendleton did not
10 have a long standing relationship with the project operator.

11 d. That Ed Pendleton, Lou Pendleton and Al Pendleton did not
12 have any of their own money invested in the Project(s).

13 e. That Ed Pendleton, Lou Pendleton and Al Pendleton did not
14 own and had not purchased the seismic studies which related to the Project(s), and
15 did not have the means and resources necessary to interpret these seismic studies
16 and to provide geological and geophysical analysis of these seismic studies on the
17 PLAINTIFFS' behalf.

18 f. That Ed Pendleton, Lou Pendleton and Al Pendleton did not
19 have the financial resources and administrative capability to competently manage
20 the PLAINTIFFS' investment in the Project.

21 g. That Ed Pendleton, Lou Pendleton and Al Pendleton were not
22 onsite or going to be onsite on a regular basis to oversee operations at the
23 Project(s).

24 h. That PLAINTIFF'S capital investment was not used for
25 legitimate operations and costs relating to Project(s) and in fact were used for other
26 purposes, including the personal use of Ed Pendleton, Lou Pendleton and/or Al
27 Pendleton.

28

1 i. That the written projected returns on PLAINTIFF'S investment
2 provided by Defendants, were not based on prior performance of Defendants' other
3 oil exploration projects.

4 35. PLAINTIFF is informed and believes and on that basis alleges that
5 when Defendants made these representations they knew them to be false, and the
6 representations were made by Defendants with the intent to defraud and deceive
7 PLAINTIFF and with the intent to induce Plaintiff to invest money into the
8 Project(s).

9 36. PLAINTIFF is informed and believes and on that basis alleges that at
10 the time these representations were made by Defendants, PLAINTIFF was ignorant
11 of the falsity of Defendant's representations and believed them to be true. In
12 reliance on Defendants' representations, PLAINTIFF was induced to and did
13 transfer and otherwise invest approximately \$650,000 into the Project(s).

14 37. Had PLAINTIFF known the true facts as set forth in paragraph 34
15 herein, PLAINTIFF would not have invested any money into the Project(s).
16 PLAINTIFF did not know the true facts until in or about December 2011 and
17 continuing into January 2013 through the trial testimony and other communications
18 and court rulings in connection with a case entitled Bays Exploration, Inc. vs.
19 Pensa, Inc. in the United States District Court for the Western District of
20 Oklahoma. Defendant Ed Pendleton and Lou and Al Pendleton continued to re-
21 affirm the misrepresented facts until in or about the start of the trial in December,
22 2011. Therefore, Plaintiff could not have earlier discovered the true facts.

23 38. PLAINTIFF is informed and believes and on that basis alleges that
24 PLAINTIFFS' reliance on Defendants' representations was justified because,
25 among other things, Defendants had continuously told PLAINTIFF of their
26 successes, of their solid relationship with the operator, of their returns on previous
27 oil exploration projects and expected returns, and that they had their own personal
28 funds in the Project(s) right along with PLAINTIFF'S investment. PLAINTIFF

1 had no reason to disbelieve the representations by Defendants.

2 39. As a direct and proximate result of the misrepresentations and on
3 PLAINTIFF'S reliance, PLAINTIFF has sustained and continues to sustain
4 damages in that PLAINTIFF was induced to transfer the sum of \$650,000 to
5 Defendants, for which PLAINTIFF has received no return of principle, interest or
6 any profit, all to PLAINTIFF'S damage in an amount to be proven at time to trial.

7 40. PLAINTIFF is informed and believes and on that basis further alleges
8 that Defendants' conduct constitutes malice, fraud and oppression as defined in
9 Civil Code section 3294, and PLAINTIFF should recover, in addition to actual
10 damages, exemplary and punitive damages to make an example of and to punish
11 Defendants.

12 **SECOND CAUSE OF ACTION**

13 **(Fraud-Intentional Misrepresentation)**

14 **(By James K. Lust Against Defendant Ed Pendleton Only)**

15 41. PLAINTIFF incorporates and re-alleges, all previous paragraphs as if
16 set forth in full herein.

17 42. PLAINTIFF is informed and believes and on that basis alleges that in
18 or about early 2003 and continuing, Defendant falsely and fraudulently
19 misrepresented that he had paid to acquire an interest in a project known as the
20 "Davis Field Project" located in Garvin County Oklahoma. Thereafter, in or about
21 October, 2006, Defendant falsely and fraudulently misrepresented the additional
22 following facts to PLAINTIFF JAMES K. LUST:

23 a. That Ed Pendleton, Lou Pendleton and Al Pendleton had
24 experience in the oil and gas well industry, including experience in the drilling and
25 completion of oil and gas wells located in central Oklahoma.

26 b. That Ed Pendleton, Lou Pendleton and Al Pendleton owned a
27 transferrable interest in an oil exploration project(s) (the "Project").
28

1 c. That Ed Pendleton, Lou Pendleton and Al Pendleton had a long
2 standing relationship with the project operator known as "Bays Exploration".

3 d. That Ed Pendleton, Lou Pendleton and Al Pendleton had their
4 own money invested in the Project(s).

5 e. That Ed Pendleton, Lou Pendleton and Al Pendleton owned and
6 had purchased the seismic studies which related to the Project(s), and had the
7 means and resources necessary to interpret these seismic studies and to provide
8 geological and geophysical analysis of these seismic studies on the PLAINTIFFS'
9 behalf.

10 f. That Ed Pendleton, Lou Pendleton and Al Pendleton had the
11 financial resources and administrative capability to competently manage the
12 PLAINTIFFS' investment in the Project.

13 g. That Ed Pendleton, Lou Pendleton and Al Pendleton would be
14 onsite on a regular basis to oversee operations at the Project(s) and for the
15 protection of PLAINTIFF'S investment.

16 h. That PLAINTIFF'S capital investment would be used for
17 operations and costs relating to the Project(s) and not for any other purpose,
18 including the personal use of Ed Pendleton, Lou Pendleton and/or Al Pendleton.

19 i. That the written projected returns on PLAINTIFF'S investment
20 provided by Defendants, were based on Defendant's other oil exploration projects
21 and returns.

22 43. PLAINTIFF is informed and believes and on that basis alleges that
23 these representations were in fact false and Defendant knew them to be false at the
24 time that they were made, and at all times herein mentioned.

25 44. PLAINTIFF is informed and believes and on that basis alleges that the
26 true facts were as follows:

27 a. That Ed Pendleton, Lou Pendleton and Al Pendleton did not
28 have experience in the oil and gas well industry, and did not have experience in the

1 drilling and completion of oil and gas wells located in central Oklahoma.

2 b. That Ed Pendleton, Lou Pendleton and Al Pendleton did not
3 own a transferrable interest in the Project(s).

4 c. That Ed Pendleton, Lou Pendleton and Al Pendleton did not
5 have a long standing relationship with the project operator.

6 d. That Ed Pendleton, Lou Pendleton and Al Pendleton did not
7 have any of their own money invested in the Project(s).

8 e. That Ed Pendleton, Lou Pendleton and Al Pendleton did not
9 own and had not purchased the seismic studies which related to the Project(s), and
10 did not have the means and resources necessary to interpret these seismic studies
11 and to provide geological and geophysical analysis of these seismic studies on the
12 PLAINTIFFS' behalf.

13 f. That Ed Pendleton, Lou Pendleton and Al Pendleton did not
14 have the financial resources and administrative capability to competently manage
15 the PLAINTIFFS' investment in the Project.

16 g. That Ed Pendleton, Lou Pendleton and Al Pendleton were not
17 onsite or going to be onsite on a regular basis to oversee operations at the
18 Project(s).

19 h. That PLAINTIFF'S capital investment was not used for
20 legitimate operations and costs relating to Project(s) and in fact were used for other
21 purposes, including the personal use of Ed Pendleton, Lou Pendleton and/or Al
22 Pendleton.

23 i. That the written projected returns on PLAINTIFF'S investment
24 provided by Defendants, were not based on prior performance of Defendants' other
25 oil exploration projects.

26 45. PLAINTIFF is informed and believes and on that basis alleges that
27 when Defendant made these representations Defendant knew them to be false, and
28 the representations were made by Defendant with the intent to defraud and deceive

1 PLAINTIFF and with the intent to induce PLAINTIFF to invest money into the
2 Project(s).

3 46. PLAINTIFF is informed and believes and on that basis alleges that at
4 the time these representations were made by Defendant, PLAINTIFF was ignorant
5 of the falsity of Defendant's representations and believed them to be true. In
6 reliance on Defendant's representations, PLAINTIFF was induced to and did
7 transfer and otherwise invest approximately \$400,000 into the Davis Field Project
8 and approximately \$1,500,000 into other Projects.

9 47. Had PLAINTIFF known the true fact as set forth in paragraph 44
10 herein, PLAINTIFF would not have invested any money into the Davis Field
11 Project or the other Projects. PLAINTIFF did not know the true facts until in or
12 about December 2011 and continuing into January 2013 through the trial testimony
13 and other communications and court rulings in connection with a case entitled Bays
14 Exploration, Inc. vs. Pensa, Inc. in the United States District Court for the Western
15 District of Oklahoma. Defendant Ed Pendleton and Lou and Al Pendleton
16 continued to re-affirm the misrepresented facts until in or about the start of the trial
17 in December, 2011. Therefore, Plaintiff could not have earlier discovered the true
18 facts.

19 48. PLAINTIFF is informed and believes and on that basis alleges that
20 PLAINTIFFS' reliance on Defendant's representations was justified because,
21 among other things, Defendant had continuously told PLAINTIFF of Defendant's
22 successes, of his solid relationship with the operator, of his returns on previous oil
23 exploration projects and expected returns, and that Defendant had his own personal
24 funds in the Projects right along with PLAINTIFF'S investment. PLAINTIFF had
25 no reason to disbelieve the representations by Defendant.

26 49. As a direct and proximate result of the misrepresentations and on
27 PLAINTIFF'S reliance, PLAINTIFF has sustained and continues to sustain
28 damages in that PLAINTIFF was induced to transfer the sum of \$1,930,000 to

1 Defendant, for which PLAINTIFF has received minimal return of principle, interest
 2 or any profit, all to PLAINTIFF'S damage in an amount to be proven at time to
 3 trial.

4 50. PLAINTIFF is informed and believes and on that basis further alleges
 5 that Defendant's conduct constitutes malice, fraud and oppression as defined in
 6 Civil Code section 3294, and PLAINTIFF should recover, in addition to actual
 7 damages, exemplary and punitive damages to make an example of and to punish
 8 Defendant.

9 **THIRD CAUSE OF ACTION**

10 **(Fraud-Intentional Misrepresentation)**

11 **(By Richard Cook and Mary Cook Against All Defendants)**

12 51. PLAINTIFFS incorporate and re-allege, all previous paragraphs as if
 13 set forth in full herein.

14 52. PLAINTIFFS are informed and believe and on that basis allege that in
 15 or about March, 2005 and continuing, Defendants falsely and fraudulently
 16 misrepresented the following facts to PLAINTIFFS RICHARD COOK and MARY
 17 COOK:

18 a. That Ed Pendleton, Lou Pendleton and Al Pendleton had
 19 experience in the oil and gas well industry, including experience in the drilling and
 20 completion of oil and gas wells located in central Oklahoma.

21 b. That Ed Pendleton, Lou Pendleton and Al Pendleton owned a
 22 transferrable interest in an oil exploration project(s) (the "Project").

23 c. That Ed Pendleton, Lou Pendleton and Al Pendleton had a long
 24 standing relationship with the project operator known as "Bays Exploration".

25 d. That Ed Pendleton, Lou Pendleton and Al Pendleton had their
 26 own money invested in the Project(s).

27 e. That Ed Pendleton, Lou Pendleton and Al Pendleton owned and
 28 had purchased the seismic studies which related to the Project(s), and had the

1 means and resources necessary to interpret these seismic studies and to provide
2 geological and geophysical analysis of these seismic studies on the PLAINTIFFS'
3 behalf.

4 f. That Ed Pendleton, Lou Pendleton and Al Pendleton had the
5 financial resources and administrative capability to competently manage the
6 PLAINTIFFS' investment in the Project.

7 g. That Ed Pendleton, Lou Pendleton and Al Pendleton would be
8 onsite on a regular basis to oversee operations at the Project(s) and for the
9 protection of PLAINTIFF'S investment.

10 h. That PLAINTIFF'S capital investment would be used for
11 operations and costs relating to the Project(s) and not for any other purpose,
12 including the personal use of Ed Pendleton, Lou Pendleton and/or Al Pendleton.

13 i. That the written projected returns on PLAINTIFF'S investment
14 provided by Defendants, were based on Defendants' other oil exploration projects
15 and returns.

16 53. PLAINTIFFS are informed and believe and on that basis allege that
17 these representations were in fact false and Defendants knew them to be false at the
18 time that they were made, and at all times herein mentioned.

19 54. PLAINTIFFS are informed and believe and on that basis allege that
20 the true facts were as follows:

21 a. That Ed Pendleton, Lou Pendleton and Al Pendleton did not
22 have experience in the oil and gas well industry, and did not have experience in the
23 drilling and completion of oil and gas wells located in central Oklahoma.

24 b. That Ed Pendleton, Lou Pendleton and Al Pendleton did not
25 own a transferrable interest in the Project(s).

26 c. That Ed Pendleton, Lou Pendleton and Al Pendleton did not
27 have a long standing relationship with the project operator.
28

1 d. That Ed Pendleton, Lou Pendleton and Al Pendleton did not
2 have any of their own money invested in the Project(s).

3 e. That Ed Pendleton, Lou Pendleton and Al Pendleton did not
4 own and had not purchased the seismic studies which related to the Project(s), and
5 did not have the means and resources necessary to interpret these seismic studies
6 and to provide geological and geophysical analysis of these seismic studies on the
7 PLAINTIFFS' behalf.

8 f. That Ed Pendleton, Lou Pendleton and Al Pendleton did not
9 have the financial resources and administrative capability to competently manage
10 the PLAINTIFFS' investment in the Project.

11 g. That Ed Pendleton, Lou Pendleton and Al Pendleton were not
12 onsite or going to be onsite on a regular basis to oversee operations at the
13 Project(s).

14 h. That PLAINTIFF'S capital investment was not used for
15 legitimate operations and costs relating to Project(s) and in fact were used for other
16 purposes, including the personal use of Ed Pendleton, Lou Pendleton and/or Al
17 Pendleton.

18 i. That the written projected returns on PLAINTIFF'S investment
19 provided by Defendants, were not based on prior performance of Defendants' other
20 oil exploration projects.

21 55. PLAINTIFFS are informed and believe and on that basis allege that
22 when Defendants made these representations they knew them to be false, and the
23 representations were made by Defendants with the intent to defraud and deceive
24 PLAINTIFFS and with the intent to induce PLAINTIFFS to invest money into the
25 Project(s).

26 56. PLAINTIFFS are informed and believe and on that basis allege that at
27 the time these representations were made by Defendants, PLAINTIFFS were
28 ignorant of the falsity of Defendants' representations and believed them to be true.

1 In reliance on Defendants' representations, PLAINTIFFS were induced to and did
2 transfer and otherwise invest approximately \$1,300,000 into the Project(s).

3 57. Had PLAINTIFFS known the true fact as set forth in paragraph 54
4 herein, PLAINTIFFS would not have invested any money into the Project(s).
5 PLAINTIFF did not know the true facts until in or about December 2011 and
6 continuing into January 2013 through the trial testimony and other communications
7 and court rulings in connection with a case entitled Bays Exploration, Inc. vs.
8 Pensa, Inc. in the United States District Court for the Western District of
9 Oklahoma. Defendant Ed Pendleton and Lou and Al Pendleton continued to re-
10 affirm the misrepresented facts until in or about the start of the trial in December,
11 2011. Therefore, Plaintiff could not have earlier discovered the true facts.

12 58. PLAINTIFFS are informed and believe and on that basis allege that
13 PLAINTIFFS' reliance on Defendants' representations was justified because,
14 among other things, Defendants had continuously told PLAINTIFFS of their
15 successes, of their solid relationship with the operator, of their returns on previous
16 oil exploration projects and expected returns, and that they had their own personal
17 funds in the Project right along with PLAINTIFFS' investment. PLAINTIFFS had
18 no reason to disbelieve the representations by Defendants.

19 59. As a direct and proximate result of the misrepresentations and on
20 PLAINTIFFS' reliance, PLAINTIFFS have sustained and continues to sustain
21 damages in that PLAINTIFFS were induced to transfer the sum of \$1,300,000 to
22 Defendants, for which PLAINTIFFS have received no return of principle, interest
23 or any profit, all to PLAINTIFFS' damage in an amount to be proven at time to
24 trial.

25 60. PLAINTIFFS are informed and believe and on that basis further allege
26 that Defendants' conduct constitutes malice, fraud and oppression as defined in
27 Civil Code section 3294, and PLAINTIFFS should recover, in addition to actual
28

1 damages, exemplary and punitive damages to make an example of and to punish
2 Defendants.

3 **FOURTH CAUSE OF ACTION**

4 **(Fraud-Suppression of Fact)**

5 **(By Richard M. Hughes Against All Defendants)**

6 61. PLAINTIFFS incorporate and re-allege, all previous paragraphs as if
7 set forth in full herein.

8 62. PLAINTIFF is informed and believes and on that basis alleges that in
9 or about March, 2005 and continuing, Defendants concealed and suppressed the
10 following facts from PLAINTIFF RICHARD M. HUGHES:

11 a. That Ed Pendleton, Lou Pendleton and Al Pendleton did not
12 have experience in the oil and gas industry, and did not have experience in the
13 drilling and completion of oil and gas wells located in central Oklahoma.

14 b. That Ed Pendleton, Lou Pendleton and Al Pendleton did not
15 own any transferrable interest in the oil exploration projects ("Project") and in fact
16 were contractually prohibited from transferring any of their interest in the
17 Project(s).

18 c. That Ed Pendleton, Lou Pendleton and Al Pendleton did not
19 have any prior relationship with the Project operator.

20 d. That Ed Pendleton, Lou Pendleton and Al Pendleton did not
21 have any of their personal monies invested in the Projects for which they solicited
22 investment from PLAINTIFF.

23 e. That Ed Pendleton, Lou Pendleton and Al Pendleton did not
24 own, nor did they pay for the seismic studies that they subsequently cost billed
25 PLAINTIFF for, nor did they have the means and resources necessary to interpret
26 these seismic studies and to provide the geological and geophysical analysis that
27 they subsequently cost billed PLAINTIFF for.

28

1 f. That Ed Pendleton, Lou Pendleton and Al Pendleton did not
2 have the financial resources or administrative capability to competently manage the
3 PLAINTIFF's investment in the Project.

4 63. PLAINTIFF is informed and believes and on that basis alleges that
5 these concealments and suppressions of fact herein alleged to have been made by
6 Defendants were made with the intent to induce PLAINTIFF to invest the sum of
7 \$650,000 into the Project(s).

8 64. PLAINTIFF is informed and believes and on that basis alleges that
9 PLAINTIFF, at the time of these suppressions and concealment of fact, was
10 ignorant of the suppressed facts. PLAINTIFF did not learn the concealed facts until
11 in or about December 2011 and continuing into January 2013 through the trial
12 testimony and other communications and court rulings in connection with a case
13 entitled Bays Exploration, Inc. vs. Pensa, Inc. in the United States District Court for
14 the Western District of Oklahoma. Defendant Ed Pendleton and Lou and Al
15 Pendleton continued to re-affirm the misrepresented facts until in or about the start
16 of the trial in December, 2011. Therefore, Plaintiff could not have earlier
17 discovered the concealed facts.

18 65. Had PLAINTIFF known the suppressed facts, PLAINTIFF would not
19 have invested the money with Defendants.

20 66. PLAINTIFF is informed and believes and on that basis alleges that
21 without knowledge of the suppressed facts, and in reliance on Defendants'
22 continuous statements to PLAINTIFF of their successes, of their solid relationship
23 with the operator, of their returns on previous oil exploration projects and expected
24 returns and of the fact that they had their own personal funds in the Projects right
25 along with PLAINTIFF'S investment, PLAINTIFF had no reason to disbelieve the
26 representations by Defendants.

27 67. As a direct and proximate result of Defendants' concealment
28 PLAINTIFF has sustained and continues to sustain damages in that PLAINTIFF

1 was induced to transfer the sum of \$650,000 to Defendants, for which PLAINTIFF
 2 has received no return of principle, interest or any profit, all to PLAINTIFF'S
 3 damage in an amount to be proven at time to trial.

4 68. PLAINTIFF is informed and believes and on that basis further alleges
 5 that Defendants' conduct constitutes malice, fraud and oppression as defined in
 6 Civil Code section 3294, and PLAINTIFF should recover, in addition to actual
 7 damages, exemplary and punitive damages to make an example of and to punish
 8 Defendants.

9 **FIFTH CAUSE OF ACTION**

10 **(Fraud-Suppression of Fact)**

11 **(By James K. Lust Against Defendant Ed Pendleton Only)**

12 69. PLAINTIFF incorporates and re-alleges, all previous paragraphs as if
 13 set forth in full herein.

14 70. PLAINTIFF is informed and believes and on that basis alleges that in
 15 or about March, 2005 and continuing, Defendant concealed and suppressed the
 16 following facts from PLAINTIFF JAMES K. LUST:

17 a. That Ed Pendleton, Lou Pendleton and Al Pendleton did not
 18 have experience in the oil and gas industry, and did not have experience in the
 19 drilling and completion of oil and gas wells located in central Oklahoma.

20 b. That Ed Pendleton, Lou Pendleton and Al Pendleton did not
 21 own any transferrable interest in the oil exploration projects ("Project") and in fact
 22 were contractually prohibited from transferring any of their interest in the
 23 Project(s).

24 c. That Ed Pendleton, Lou Pendleton and Al Pendleton did not
 25 have any prior relationship with the Project operator.

26 d. That Ed Pendleton, Lou Pendleton and Al Pendleton did not
 27 have any of their personal monies invested in the Projects for which they solicited
 28 investment from PLAINTIFF.

1 e. That Ed Pendleton, Lou Pendleton and Al Pendleton did not
2 own, nor did they pay for the seismic studies that they subsequently cost billed
3 PLAINTIFF for, nor did they have the means and resources necessary to interpret
4 these seismic studies and to provide the geological and geophysical analysis that
5 they subsequently cost billed PLAINTIFF for.

6 f. That Ed Pendleton, Lou Pendleton and Al Pendleton did not
7 have the financial resources or administrative capability to competently manage the
8 PLAINTIFF's investment in the Project.

9 71. PLAINTIFF is informed and believes and on that basis alleges that
10 these concealments and suppressions of fact herein alleged to have been made by
11 Defendant were made with the intent to induce PLAINTIFF to invest the sum of
12 \$1,930,000 into the Project.

13 72. PLAINTIFF is informed and believes and on that basis alleges that
14 PLAINTIFF, at the time of these suppressions and concealment of fact, was
15 ignorant of the suppressed facts. PLAINTIFF did not learn the concealed facts until
16 in or about December 2011 and continuing into January 2013 through the trial
17 testimony and other communications and court rulings in connection with a case
18 entitled Bays Exploration, Inc. vs. Pensa, Inc. in the United States District Court for
19 the Western District of Oklahoma. Defendant Ed Pendleton and Lou and Al
20 Pendleton continued to re-affirm the misrepresented facts until in or about the start
21 of the trial in December, 2011. Therefore, Plaintiff could not have earlier
22 discovered the concealed facts.

23 73. Had PLAINTIFF known the suppressed facts, PLAINTIFF would not
24 have invested the money with Defendant.

25 74. PLAINTIFF is informed and believes and on that basis alleges that
26 without knowledge of the suppressed facts, and in reliance on Defendant's
27 continuous statements to PLAINTIFF of their successes, of their solid relationship
28 with the operator, of their returns on previous oil exploration projects and expected

1 returns and of the fact that they had their own personal funds in the Projects right
 2 along with PLAINTIFF'S investment, PLAINTIFF had no reason to disbelieve the
 3 representations by Defendant.

4 75. As a direct and proximate result of Defendant's concealment
 5 PLAINTIFF has sustained and continues to sustain damages in that PLAINTIFF
 6 was induced to transfer the sum of \$1,930,000 to Defendant, for which PLAINTIFF
 7 has received no return of principle, interest or any profit, all to PLAINTIFF'S
 8 damage in an amount to be proven at time to trial.

9 76. PLAINTIFF is informed and believes and on that basis further alleges
 10 that Defendant's conduct constitutes malice, fraud and oppression as defined in
 11 Civil Code section 3294, and PLAINTIFF should recover, in addition to actual
 12 damages, exemplary and punitive damages to make an example of and to punish
 13 Defendant.

14 **SIXTH CAUSE OF ACTION**

15 **(Fraud-Suppression of Fact)**

16 **(By James V. Stewart Against Defendant Ed Pendleton Only)**

17 77. PLAINTIFF incorporates and re-alleges, all previous paragraphs as if
 18 set forth in full herein.

19 78. PLAINTIFF is informed and believes and on that basis alleges that in
 20 or about March, 2005 and continuing, Defendant concealed and suppressed the
 21 following facts from PLAINTIFF JAMES V. STEWART:

22 a. That Ed Pendleton, Lou Pendleton and Al Pendleton did not
 23 have experience in the oil and gas industry, and did not have experience in the
 24 drilling and completion of oil and gas wells located in central Oklahoma.

25 b. That Ed Pendleton, Lou Pendleton and Al Pendleton did not
 26 own any transferrable interest in the oil exploration projects ("Project") and in fact
 27 were contractually prohibited from transferring any of their interest in the
 28 Project(s).

1 c. That Ed Pendleton, Lou Pendleton and Al Pendleton did not
2 have any prior relationship with the Project operator.

3 d. That Ed Pendleton, Lou Pendleton and Al Pendleton did not
4 have any of their personal monies invested in the Projects for which they solicited
5 investment from PLAINTIFF.

6 e. That Ed Pendleton, Lou Pendleton and Al Pendleton did not
7 own, nor did they pay for the seismic studies that they subsequently cost billed
8 PLAINTIFF for, nor did they have the means and resources necessary to interpret
9 these seismic studies and to provide the geological and geophysical analysis that
10 they subsequently cost billed PLAINTIFF for.

11 f. That Ed Pendleton, Lou Pendleton and Al Pendleton did not
12 have the financial resources or administrative capability to competently manage the
13 PLAINTIFF's investment in the Project.

14 79. PLAINTIFF is informed and believes and on that basis alleges that
15 these concealments and suppressions of fact herein alleged to have been made by
16 Defendant were made with the intent to induce PLAINTIFF to invest the sum of
17 \$1,400,000 into the Project.

18 80. PLAINTIFF is informed and believes and on that basis alleges that
19 PLAINTIFF, at the time of these suppressions and concealment of fact, was
20 ignorant of the suppressed facts. PLAINTIFF did not learn the concealed facts until
21 in or about December 2011 and continuing into January 2013 through the trial
22 testimony and other communications and court rulings in connection with a case
23 entitled Bays Exploration, Inc. vs. Pensa, Inc. in the United States District Court for
24 the Western District of Oklahoma. Defendant Ed Pendleton and Lou and Al
25 Pendleton continued to re-affirm the misrepresented facts until in or about the start
26 of the trial in December, 2011. Therefore, Plaintiff could not have earlier
27 discovered the concealed facts.

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1 81. Had PLAINTIFF known the suppressed facts, PLAINTIFF would not
2 have invested the money with Defendant.

3 82. PLAINTIFF is informed and believes and on that basis alleges that
4 without knowledge of the suppressed facts, and in reliance on Defendant's
5 continuous statements to PLAINTIFF of their successes, of their solid relationship
6 with the operator, of their returns on previous oil exploration projects and expected
7 returns and of the fact that they had their own personal funds in the Projects right
8 along with PLAINTIFF'S investment, PLAINTIFF had no reason to disbelieve the
9 representations by Defendant.

10 83. As a direct and proximate result of Defendant's concealment
11 PLAINTIFF has sustained and continues to sustain damages in that PLAINTIFF
12 was induced to transfer the sum of \$1,400,000 to Defendant, for which PLAINTIFF
13 has received no return of principle, interest or any profit, all to PLAINTIFF'S
14 damage in an amount to be proven at time to trial.

15 84. PLAINTIFF is informed and believes and on that basis further alleges
16 that Defendant's conduct constitutes malice, fraud and oppression as defined in
17 Civil Code section 3294, and PLAINTIFF should recover, in addition to actual
18 damages, exemplary and punitive damages to make an example of and to punish
19 Defendant.

20 **SEVENTH CAUSE OF ACTION**

21 **(Fraud-Suppression of Fact)**

22 **(By Richard Cook and Mary Cook Against All Defendants)**

23 85. PLAINTIFFS incorporate and re-allege, all previous paragraphs as if
24 set forth in full herein.

25 86. PLAINTIFFS are informed and believe and on that basis allege that in
26 or about March, 2005 and continuing, Defendants concealed and suppressed the
27 following facts from PLAINTIFFS RICHARD COOK and MARY COOK:
28

1 a. That Ed Pendleton, Lou Pendleton and Al Pendleton did not
2 have experience in the oil and gas industry, and did not have experience in the
3 drilling and completion of oil and gas wells located in central Oklahoma.

4 b. That Ed Pendleton, Lou Pendleton and Al Pendleton did not
5 own any transferrable interest in the oil exploration projects ("Project") and in fact
6 were contractually prohibited from transferring any of their interest in the
7 Project(s).

8 c. That Ed Pendleton, Lou Pendleton and Al Pendleton did not
9 have any prior relationship with the Project operator.

10 d. That Ed Pendleton, Lou Pendleton and Al Pendleton did not
11 have any of their personal monies invested in the Projects for which they solicited
12 investment from PLAINTIFF.

13 e. That Ed Pendleton, Lou Pendleton and Al Pendleton did not
14 own, nor did they pay for the seismic studies that they subsequently cost billed
15 PLAINTIFF for, nor did they have the means and resources necessary to interpret
16 these seismic studies and to provide the geological and geophysical analysis that
17 they subsequently cost billed PLAINTIFF for.

18 f. That Ed Pendleton, Lou Pendleton and Al Pendleton did not
19 have the financial resources or administrative capability to competently manage the
20 PLAINTIFF's investment in the Project.

21 87. PLAINTIFFS are informed and believe and on that basis allege that
22 these concealments and suppressions of fact herein alleged to have been made by
23 Defendants were made with the intent to induce PLAINTIFFS to invest the sum of
24 \$1,300,000 into the Project(s).

25 88. PLAINTIFFS are informed and believe and on that basis allege that
26 PLAINTIFFS, at the time of these suppressions and concealment of fact, were
27 ignorant of the suppressed facts. PLAINTIFFS did not learn the concealed facts
28 until in or about December 2011 and continuing into January 2013 through the trial

1 testimony and other communications and court rulings in connection with a case
2 entitled Bays Exploration, Inc. vs. Pensa, Inc. in the United States District Court for
3 the Western District of Oklahoma. Defendant Ed Pendleton and Lou and Al
4 Pendleton continued to re-affirm the misrepresented facts until in or about the start
5 of the trial in December, 2011. Therefore, PLAINTIFFS could not have earlier
6 discovered the concealed facts.

7 89. Had PLAINTIFFS known the suppressed facts, PLAINTIFFS would
8 not have invested the money with Defendants.

9 90. PLAINTIFFS are informed and believe and on that basis allege that
10 without knowledge of the suppressed facts, and in reliance on Defendants'
11 continuous statements to PLAINTIFFS of their successes, of their solid relationship
12 with the operator, of their returns on previous oil exploration projects and expected
13 returns and of the fact that they had their own personal funds in the Projects right
14 along with PLAINTIFFS' investment, PLAINTIFFS had no reason to disbelieve
15 the representations by Defendants.

16 91. As a direct and proximate result of Defendants' concealment
17 PLAINTIFFS have sustained and continues to sustain damages in that
18 PLAINTIFFS were induced to transfer the sum of \$1,300,000 to Defendants, for
19 which PLAINTIFFS have received no return of principle, interest or any profit, all
20 to PLAINTIFFS' damage in an amount to be proven at time to trial.

21 92. PLAINTIFFS are informed and believe and on that basis further allege
22 that Defendants' conduct constitutes malice, fraud and oppression as defined in
23 Civil Code section 3294, and PLAINTIFFS should recover, in addition to actual
24 damages, exemplary and punitive damages to make an example of and to punish
25 Defendants.

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EIGHTH CAUSE OF ACTION

(Financial Elder Abuse)

(By James K. Lust Against Defendant Ed Pendleton Only)

93. PLAINTIFF incorporates and re-alleges, all previous paragraphs as if set forth in full herein.

94. PLAINTIFF is informed and believes and on that basis alleges that at all relevant times, PLAINTIFF JAMES K. LUST was an elder as defined in California Welfare and Institutions Code §15610.27.

95. PLAINTIFF is informed and believes and on that basis alleges that California Welfare and Institutions Code §15610.30 provides that Financial Elder Abuse occurs when a person or entity does any of the following:

“(1) takes, secrets, appropriates, obtains or retains real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both.

(2) Assists in taking, secreting, appropriating, obtaining, or retaining real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both.”

96. PLAINTIFF is informed and believes and on that basis alleges that Defendant obtained and retained the sum of \$1,930,000 from PLAINTIFF JAMES K. LUST based on the intentional misrepresentations set forth in this Complaint, and based on suppression of facts as set forth in this Complaint.

97. PLAINTIFF is informed and believes and on that basis alleges that Defendant obtained and retained these monies from PLAINTIFF for wrongful use and/or with the intent to defraud PLAINTIFF.

98. PLAINTIFF is informed and believes and on that basis alleges that Defendant’s conduct constitutes financial abuse under Welfare & Institutions Code § 15657.5 as defined in Welfare & Institutions Code § 15610.30.

1 drill and develop the oil and gas well (or oil and gas field), and that the JOA would
2 identify a party known as an Operator, who would be responsible for the actual
3 drilling, completing and producing an oil and gas well or oil wells under the JOA.

4 106. The Defendant advised each of the PLAINTIFFS that it was a common
5 practice within the oil and gas industry for an unsophisticated investor, like
6 PLAINTIFFS, to purchase an “equitable working interest” in an oil and gas well.
7 Under this type of investment vehicle, the investor would designate an oil and gas
8 industry member (“Designated Partner”) to hold the legal title for the benefit of the
9 investor’s equitable working interest, and who would also be the party to the JOA
10 to whom the Operator would issue drilling and completion reports, proposed
11 operations, Authority for Expenditures (“AFEs”), Joint Interest Billings (“JIBs”)
12 and other sophisticated information unique to the operations of an oil and gas well.

13 107. The Defendant represented to each PLAINTIFF that such an equitable
14 working interest was the safest investment vehicle for a non-sophisticated oil and
15 gas well investor because the Designated Partner would also be responsible for
16 providing the expertise required to make an informed decisions for proposed
17 operations or provide expert analysis of information provided by the Operator and
18 that the PLAINTIFF investor would be entitled to make a proposed operation
19 election that effected the Plaintiff investor’s equitable interest and that such an
20 election would not be impacted by any other elections made by either the
21 Designated Partner or another equitable working interest owner.

22 108. It was under these circumstances, and in reliance on the Defendants’
23 representations, that each PLAINTIFF accepted the Defendants’ recommendations
24 to designate Ed Pendleton, Lou Pendleton and/or Al Pendleton as the Designated
25 Partner for each PLAINITFF’S investment in one or more of the oil and gas wells
26 operated by Bays Exploration in Oklahoma. The PLAINITFFS’ acceptance of the
27 Defendants’ recommendations that Ed Pendleton, Lou Pendleton and/or Al
28 Pendleton be the Designated Partner created a trustee type relationship that imposed

1 fiduciary like responsibilities on the Defendants to:

2 (i) provide each PLAINTIFF with expert analysis and
3 recommendations regarding operations proposed under a JOA governing a well in
4 which a PLAINTIFF invested and similar services for any AFE issued by the
5 Operator in conjunction with such a proposed operation;

6 (ii) properly account to each PLAINTIFF for charges, costs, and
7 revenues for each well in which a PLAINTIFF participated;

8 (iii) properly and timely advise each PLAINTIFF of the status of a
9 well in which a PLAINTIFF participated;

10 (iv) advise each PLAINTIFF if the Designated Partner was and/or
11 became financially unable to satisfy the Designated Partner's financial obligations
12 under a JOA for a well in which a PLAINTIFF invested;

13 (v) take any action that may be necessary to properly and timely
14 communicate any elections made by the Plaintiffs to the Operator;

15 (vi) to take any action that may be necessary to properly and timely
16 remit payments by a Plaintiff to the Operator to fund the operation in which the
17 Plaintiff has elected to participate; and

18 (vii) properly advise each PLAINTIFF of what steps and/or rights the
19 Designated Partner might take to protect the PLAINTIFF's beneficiary interest in a
20 well in which a PLAINTIFF participated.

21 109. A fiduciary relationship is any relation existing between parties to a
22 transaction wherein one of the parties is in duty bound to act with the utmost good
23 faith for the benefit of the other party. Such relation ordinarily arises where a
24 confidence is reposed by one person in the integrity of another, and in such a
25 relation to the party in whom the confidence is reposed, if he voluntarily accepts or
26 assumes to accept the confidence, can take no advantage from his acts relating to
27 the interest of the other party without the latter's knowledge or consent. *Wolf v.*
28 *Superior Court* (2003) 107 Cal.App.4th 25, 29.

110. PLAINTIFFS are informed and believe and on that basis allege that Defendants, and each of them, owed a fiduciary duty to PLAINTIFFS, and each of them.

111. PLAINTIFFS are informed and believe and on that basis allege that Defendants, and each of them, breached the fiduciary duty to PLAINTIFFS as follows:

- a. Making the intentional misrepresentations as alleged in this Complaint;
- b. Concealing true facts from PLAINTIFFS as alleged in this Complaint;
- c. Converting and misappropriating PLAINTIFFS' monies as alleged in this Complaint.

112. PLAINTIFF is informed and believes and on that basis alleges that PLAINTIFFS, and each of them have been damaged as a result of Defendants' breach of fiduciary duty.

113. Defendants' conduct was a substantial factor in causing PLAINTIFFS' damages.

PRAYER

WHEREFORE, PLAINTIFFS pray for judgment for each violation alleged in this complaint against Defendants, and each of them, as follows:

AS TO THE FIRST CAUSE OF ACTION:

1. For general damages in the sum of \$650,000;
2. For prejudgment interest on the sum of \$650,000 from and after April 15, 2005;
3. For exemplary and punitive damages according to proof at trial;

AS TO THE SECOND CAUSE OF ACTION:

4. For general damages in the sum of \$1,930,000;

1 5. For prejudgment interest on the sum of \$1,930,000 from and after
2 April 15, 2005;

3 6. For exemplary and punitive damages according to proof at trial;

4 **AS TO THE THIRD CAUSE OF ACTION:**

5 7. For general damages in the sum of \$1,300,000;

6 8. For prejudgment interest on the sum of \$1,300,000 from and after
7 April 15, 2005;

8 9. For exemplary and punitive damages according to proof at trial;

9 **AS TO THE FOURTH CAUSE OF ACTION:**

10 10. For general damages in the sum of \$650,000;

11 11. For prejudgment interest on the sum of \$650,000 from and after April
12 15, 2005;

13 12. For exemplary and punitive damages according to proof at trial;

14 **AS TO THE FIFTH CAUSE OF ACTION:**

15 13. For general damages in the sum of \$1,930,000;

16 14. For prejudgment interest on the sum of \$1,930,000 from and after
17 April 15, 2005;

18 15. For exemplary and punitive damages according to proof at trial.

19 **AS TO THE SIXTH CAUSE OF ACTION:**

20 16. For general damages in the sum of \$1,400,000;

21 17. For prejudgment interest on the sum of \$1,400,000 from and after
22 April 15, 2005;

23 18. For exemplary and punitive damages according to proof at trial

24 **AS TO THE SEVENTH CAUSE OF ACTION:**

25 19. For general damages in the sum of \$1,300,000;

26 20. For prejudgment interest on the sum of \$1,300,000 from and after
27 April 15, 2005;

28 21. For exemplary and punitive damages according to proof at trial.

1 **AS TO THE EIGHTH CAUSE OF ACTION:**

- 2 22. For compensatory damages according to proof at trial;
3 23. For double damages pursuant to Probate Code § 859;
4 24. For reasonable attorney's fees and costs under Welfare & Institutions
5 Code §§ 15657(a) and/or 156757.5(a);
6 25. For punitive damages under Civil Code § 3294;

7 **AS TO THE NINTH CAUSE OF ACTION:**

- 8 26. For compensatory damages according to proof at trial;
9 27. For punitive damages under Civil Code § 3294;

10 **AS TO ALL CAUSES OF ACTION:**


- 11 28. For costs of suit incurred herein;
12 29. For prejudgment interest according to proof; and
13 30. For such other and further relief as the Court may deem proper.
14
15

16 **DEMAND FOR JURY TRIAL**

17 PLAINTIFFS hereby demand a jury trial as provided by Rule 38(a) of the
18 Federal Rules of Civil Procedure.
19

20 Dated: November 27, 2013

ARCHER NORRIS

21
22
23 
24 Matthew T. Ward
25 Attorneys for Plaintiffs
26 RICHARD M. HUGHES, JAMES K.
27 LUST, JAMES V. STEWART,
28 RICHARD M. COOK, MARY D. COOK

CERTIFICATE OF SERVICE

I, Patricia Tonti-Mace, declare:

I am a citizen of the United States and employed in Orange County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 4695 MacArthur Court, Suite 350, Newport Beach, California 92660-8816. On November 27, 2013, I served a copy of the within document(s):

FIRST AMENDED COMPLAINT FOR DAMAGES

- ☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- ☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Newport Beach, California addressed as set forth below.
- ☐ by placing the document(s) listed above in a sealed UPS envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a UPS agent for delivery.
- ☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- ☒ by transmitting via e-mail or electronic transmission the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

Squire Sanders (US) LLP
Gabriel Colwell
555 S. Flower Street, Suite 3100
Los Angeles, CA 90071
Phone: 213.624.2500
Fax: 213.623.4581
Email:
gabriel.colwell@squiresanders.com

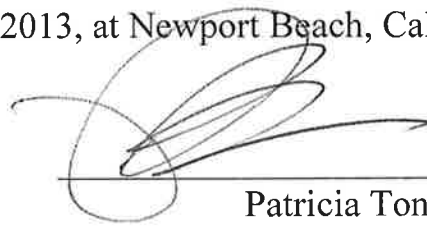
Attorneys for Defendants
ED and BEVERLY
PENDLETON

1 I am readily familiar with the firm's practice of collection and processing
2 correspondence for mailing. Under that practice it would be deposited with the
3 U.S. Postal Service on that same day with postage thereon fully prepaid in the
4 ordinary course of business. I am aware that on motion of the party served, service
5 is presumed invalid if postal cancellation date or postage meter date is more than
6 one day after date of deposit for mailing in affidavit.

7 I declare that I am employed in the office of a member of the bar of this court
8 at whose direction the service was made.

9 Executed on November 27, 2013, at Newport Beach, California.

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Patricia Tonti-Mace